

**PLANNING AND ZONING COMMISSION
MINUTES
PUBLIC HEARING/GENERAL MEETING
September 28, 2004**

PLACE: Room 206
Town Hall

TIME: 8:00 P.M.

PLANNING AND ZONING COMMISSION MEMBERS ATTENDING:
Damanti, Conze, Forman, Bigelow, Spain, Kenny

STAFF ATTENDING: Ginsberg, Keating
COURT RECORDER: Wandzelak

PUBLIC HEARING

Mr. Damanti read the following agenda item:

Flood Damage Prevention Application #210, Land Filling & Regrading Application #123, Per & Jeanne Sekse, 29 Outlook Drive. Proposing to install pool with patio, and regrade the rear yard and perform related site development activities. Subject property is located on the east side of Outlook Drive approximately 500 feet south of its intersection with Woodland Drive, and is shown on Tax Assessor's Map #52 as Lot #70, R-1/2 Zone.

Per Sekse explained that they are proposing to make changes in their backyard to install a pool and patio and that they have hired Ellen Berry, Landscape Designer, to coordinate the project. They hope to have minimal impact on the land and the landscape and there will be no disruption to the wetland or the wetland setback area. They have already obtained approval from the Environmental Protection Commission to install some planting within the 50 foot regulated area around the wetland. Mr. Sekse said that the plan involved collection of the storm water drainage and to pipe that runoff away from the neighbors. In response to questions about the letter from Mr. & Mrs. Mitchell (adjacent neighbors), Mr. Sekse said that they have addressed the previous problem with respect to storm water runoff and they will make sure that it does not reoccur. They are having their engineer come back to the site to make sure that no other drainage problems occur. They have designed the plans to retain storm water runoff and that if any problems occur during the installation, they will immediately rectify those problems. He referred to the June 16, 2004 report from the project engineer about the storm water runoff design. Mr. Sekse said that they consider installing the drainage system a top priority.

Peter Thoren of 31 Outlook Drive said that he too is concerned about storm water runoff. He said that when a stone wall was removed from an area on or adjacent to the property line, there was a drainage problem during a heavy rain storm. Mr. Thoren noted that the installation of a swimming pool will require a four foot high safety fence and there cannot be any wall close to the safety fence because a wall would enable a child to easily climb over the safety fence. He expressed a concern that if the Sekse's place a safety fence on or close to the common property line, then he, Mr. Thoren, would effectively be prohibited from building a stone wall on or near that property line. He said that in the discussions with the Sekse's, he had received a promise that blue spruce trees would be used in the replanting of the disturbed area.

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Mr. Sekse said that the stone wall in question was 6 to 12 inches in height and was basically a rubble wall. They have removed that material and will replace it with a 12 inch high wall that would be located inside the Sekse property. The 4 foot high safety fence required by the State Building Code will be placed along the property line. Mr. Sekse said that the replacement wall will similarly deflect storm water runoff away from the Thoren's property the way it was in the past. The wall will be loose set and therefore, will not be completely impervious to water. Some water could flow through the gaps in the stones, but any surges of storm water will be deflected away from the Thoren property.

Ellen Berry, Landscape Designer, said that the replacement wall will be on the Sekse property and will be virtually in the same place as the old wall (that had previously been removed). Mr. Sekse said that they have recently had the property line staked out by the Land Surveyor, but a new drawing of the survey has not been produced. They are still working from the 2001 survey to which proposed information has been added. Mr. Ginsberg said that the Environmental Protection Commission did approve the proposed planting in July or August.

Mr. Thoren said that if the fence is placed on the property line, then he would not be able to build a stone wall on his own property because children would be able to climb onto the stone wall and then easily climb over the safety fence. He submitted some photographs of the bushes that had been removed from the area adjacent to the common property line.

There were no further comments. The following motion was made: that the Commission close the public hearing regarding this matter. The motion was made by Mr. Conze, seconded by Mr. Kenny and unanimously approved.

Chairman Damanti read the following agenda item:

Proposed Amendment to the Darien Zoning Regulations. Proposal by the Darien Planning & Zoning Commission to amend Appendix B—Schedule of Fees.

Director of Planning Jeremy Ginsberg explained that the proposal involves an amendment of Appendix B – Fees within the Darien Zoning Regulations. This portion of the Regulation lists the fees that are charged by the Department for any applications that are submitted. In the past, the State of Connecticut has required a payment of \$18.00 of the first \$20.00 of application fee that is collected. The statutes were amended in July 2004, and now the State fee is \$28.00 of the first \$30.00 collected. At present, the Zoning Permit application fee specified in Appendix B is \$25.00. The staff does not have the authority to amend the application fee, only the Commission can amend the Appendix, which includes the fee schedule. The proposal would be to specify that the Zoning Permit application fee is \$10.00 plus the State-required fee. By wording it in this way, any changes in the State fee will automatically be incorporated into the fee charged to each applicant.

Mr. Ginsberg said that, in accordance with the Town Charter, the fees charged by the Board of Appeals are established by the Board of Selectmen. They have already authorized an increase in the application fee charged by the ZBA. The ZBA application fee is \$135.00 plus \$30.00 for the State fee. The total fee charged for the ZBA application is therefore \$165.00.

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There was some discussion about wording the application fee very clearly to make sure that people realize that the State fee will be charged in addition to the fee listed in Appendix B.

There were no comments or questions from the public. The following motion was made: that the Commission close the public hearing regarding this matter. The motion was made by Mr. Bigelow, seconded by Mr. Conze and unanimously approved.

Chairman Damanti read the following agenda item:

Business Site Plan #96-H/Special Permit, Frank A. Miller, 1297-1335 Boston Post Road.
Proposing to raze existing veterinary clinic and construct a new parking area and perform related site development activities. Subject property is located on the northwest side of Boston Post Road approximately 485 feet northeast of its intersection with Thorndal Circle, and is shown on Assessor's Map #39 as Lots #18A and #19, SB Zone.

John Martucci, Professional Engineer, represented the applicant. He explained the proposal involves the demolition of the veterinary clinic building that is located on the same side of the street as the Miller Automobile building. The parking lot for Miller Automobile services will be expanded into the area currently occupied by the veterinary clinic. Mr. Martucci said that the parking expansion plan has already been approved by the Environmental Protection Commission. He said that the revised plan will minimize congestion and will improve vehicular movement as well as an existing drainage problem. He submitted a revised plan dated 9/28/04 drawn at a scale of 1"=20' to show the reconfiguration of the parking entrance driveway. He said that this revised entrance driveway location would be about 60 feet +/- northeast of the existing entrance driveway and would be angled to the street rather than perpendicular to the street. He said that this change allows them to raise the level of the entrance driveway approximately 12 inches so that when storm water flooding occurs around the catch basin in the Boston Post Road, the water will not back up into the Miller Automobile site or building. He said that the back-up of storm water runoff in the Post Road occurs when there is a substantial surge of runoff water. At present, the inability of the catch basins in the Boston Post Road to pick up all the storm water can lead to a back-up of water that would flow into the entrance driveway and the Miller Auto building.

In response to questions, Mr. Martucci said that the revised driveway and parking lot layout has essentially the same drainage pattern for the new parking area as the plan previously approved by the EPC. He said that the sight lines are as good or better and that the State DOT has not yet had an opportunity to review the revised plans.

The Commission members were concerned that the Environmental Protection Commission will not be able to discuss this matter until October 20th and that it would be appropriate to have the revised plan referred to the Department of Transportation before the Commission closes the public hearing. The following motion was made: that the Planning & Zoning Commission continue this public hearing on October 26, 2004 so that the revised plans can be reviewed and commented upon by the Environmental Protection Commission and Department of Transportation and other appropriate parties. The motion was made by Mrs. Forman, seconded by Mr. Kenny and unanimously approved. Mr. Kenny also noted that there are new lighting fixtures included in the revised plan. Mr. Martucci said that he would provide information regarding the proposed lighting fixtures.

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Chairman Damanti read the following agenda item:

Flood Damage Prevention Application #215, Land Filling & Regrading Application #130, Peter Horan & Beth Stanley-Brown, 7 Fresh Meadows Lane. Proposing to fill and regrade back yard and perform related site development activities within a regulated area. Subject property is located on the east side of Fresh Meadows Lane, approximately 400 feet north of its intersection with Middlesex Road, and is shown on Assessor's Map #25 as Lot #92-3, R-1/3 Zone.

Peter Horan said that in mid-July, they had applied to install a swimming pool and were informed that they would need to get a permit from the Environmental Protection Commission to do the related site work. They have since revised the plan to delete the swimming pool proposal, but they have applied to and obtained a Permit from the Environmental Protection Commission to relocate the retaining wall and fill and regrade an area at the rear of the property and within the EPC's jurisdiction. The swimming pool is no longer part of the proposal. The proposed filling and regrading will be coordinated with the adjacent property owners (the Voges') who recently obtained approval from the Planning & Zoning Commission to do similar work. Mr. Horan said that he and his neighbors have utilized the same engineering firm. When the subdivision was originally proposed and approved, the retaining walls were constructed parallel to the rear property lines but had left a portion of the property unfilled. The proposal is already approved for the Voges' and the current proposal for 7 Fresh Meadows Lane is to relocate the retaining wall and to fill the area up to the rear property line.

There were no comments from the public or Commission members. The following motion was made: that the Commission close the public hearing regarding this matter. The motion was made by Mr. Kenny, seconded by Mr. Conze and unanimously approved.

Chairman Damanti read the following agenda item:

Land Filling & Regrading Application #127, Shedd & Jane Glassmeyer, 2 McCrea Lane. Proposing to install a stone wall and fence and add fill behind the wall and perform related site development activities. Subject property is located on the north side of McCrea Lane, at the northeast corner formed by its intersection with Old King's Highway South, and is shown on Assessor's Map #49 as Lot #26, R-1/2 Zone.

John Martucci, Professional Engineer, represented the applicant. He said that the house is located on a corner lot and therefore has two front yards. The house is oriented with a front door facing McCrea Lane and thus, the portion of the property adjacent to Old King's Highway South looks like and functions like a side yard (although technically it is also a front yard). He said that the proposal is to remove the existing six foot high fence that is parallel to Old King's Highway South and to install a stone wall approximately 18 inches high along the property line. Fill material would then be placed on the house side of the stone wall and the fence would be reinstalled. This will provide the applicants with more privacy from the traffic on Old King's Highway South and with a flat side and rear yard. The Special Permit is necessary because the filling and regrading would be within 15 feet of the property line.

Mr. Martucci mentioned that they also propose to rebuild a small headwall in the southeast corner of the property. At present, there are several drainage pipes that lead into a dry basin and an outlet

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pipe from the basin carries water under McCrae Lane. They propose to reconstruct the existing head walls and create a new stone wall to create a tiered effect. This work will not affect the flow of water and it does not affect any wetland area. He said that there would be no filling or regrading necessary as part of this stone work around the dry basin. Mr. Shedd Glassmeyer said that the basin area is not wet except during rain storms. He said that the walls would be carefully installed to protect the existing large trees in the area.

Director of Planning Jeremy Ginsberg said that the Zoning Board of Appeals had recently granted in part and denied in part the variance request with respect to the wall and fence adjacent to Old King's Highway South. He said that they approved the portion of the variance to allow the fence on top of most of the proposed wall but denied the portion of the variance with respect to the height of the fence within 30 feet of the intersection of McCrae Lane and Old King's Highway South. A copy of the ZBA resolution will be provided to the Commission when it is finalized.

There were no further comments. The following motion was made: that the Commission close the public hearing regarding this matter. The motion was made by Mr. Conze, seconded by Mrs. Forman and unanimously approved.

Chairman Damanti read the following agenda item:

Land Filling & Regrading Application #128, Robert & Catherine Barrett, 26 Great Hill Road.
Proposing to fill and regrade the back yard and perform related site development activities. Subject property is located on the south side of Great Hill Road, approximately 525 feet north of its intersection with Tokeneke Road, and is shown on Assessor's Map #36 as Lot #13, R-1/2 Zone.

John Martucci, Professional Engineer, represented the applicants. He said that the application involves filling and regrading of the back yard to create a more flat play area for the children. He said that an addition to the house is presently under construction, and fill would be used to create a more flat back yard that would extend approximately 40 to 50 feet from the back wall of the house. The fill would then be sloped down toward the neighbor to the south. The 6 foot change in grade would be accommodated over an 18 foot long space. This would create a sloped grade of one on three (one foot of vertical drop for every three feet of horizontal run). Mr. Martucci said that the neighboring property to the left looks like it was similarly filled years ago. He said that approximately 400 cubic yards of fill material would be necessary for this project.

Linda Joyce of 24 Great Hill Road said that much of the area has already been filled using material excavated from the basement of the addition. She said that the excavated material was not removed from the site, rather it was pushed into the backyard and that they have already started this filling operation.

Mr. Martucci said that the amount of fill already on the site is approximately 100 to 150 cubic yards. The proposed project would require 250 to 300 cubic yards of additional material. Mr. Barrett said that the foundation was dug in May or June.

There was a discussion about the dates on the survey maps. It was concluded that the survey map was updated in August of 2004 to show the location of the new addition but that the topographic information was not updated in August of 2004 because it does not show the fill material that was

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excavated from the addition and placed in the back yard. The contour lines shown on the survey map are the old contour lines (prior to the fill) and the dark contour lines are the proposed grades. There is presently no accurate map showing the current grades of the land.

Mr. Martucci said that the drainage pattern will remain unchanged. He said that the one on three slope can be grass or other typical vegetation. He said that it is comfortable to mow that type of slope because it is not too steep. He said that it is flat enough that it will prevent erosion. He said that a slight swale would need to be created along the easterly boundary line to make sure that there was no backup of existing runoff water from the Joyce property. Mr. Martucci said that creating a flatter backyard means that there will be more infiltration of storm water runoff from the Barrett house and back yard. The water that does not infiltrate into the new flat back yard will then go down the slope toward the Burke property. Mr. Martucci said that the drainage area is reasonably small and that there is not too much flow that would get concentrated. In response to questions he said that a drainage report was not prepared to show calculations although he did note on the drawings and plans that there would be no impact to the water shed and no impact to the neighbors. Commission members noted that he seemed to have reached a conclusion without providing the back up data.

Justin Burke of 204 Tokeneke Road said that the fill material that has already been placed on the site has already caused a funneling effect and that erosion of the fill material is evident on his property. He said that some of the Barrett fill material has already washed into his property and the concentration of water from the Barrett property has started to scour out part of the Burke property. He submitted photographs of the conditions. He said that in his five years of experience living at the site, there have only been two other occasions when there have been similar problems. Those occasions occurred when there was frozen ground and a rain storm occurred. Since the fill was placed on the Barrett property several months ago, he said that there has been a noticeable change in the volume and rate of runoff. This has resulted in sediment from the neighbor's site coming to his property and the erosion of some of his (the Burke) property.

Gerard Joyce of 24 Great Hill Road said that the landscape has already been completely changed and that the privacy of the neighbors has been impacted by the work they have already done. He submitted photographs of the existing conditions. He said that the current plan does not include any new screening or re-creation of privacy vegetation between the properties.

Rob Barrett said that they were told that they could not seed or grass or do anything to the fill until they obtained approval from the Commission. He said that much of the water that goes down to the Burke property actually comes from the Joyce property and travels through his (the Barrett) property.

Chip Dunn of New Ridge Builders said that he was not aware of an erosion problem and that now, being made aware of it, he will immediately install sediment fences. He said that if they do not obtain approval from the Planning & Zoning Commission, they will remove the fill that had been excavated for the additions. He said that the volume of fill seems to increase once the rock is removed from the earth and stockpiled.

John Martucci said the siltation noticed by the neighbor is probably coming from the disturbed soils and that the owner will put in silt fences to remedy that problem immediately. Mr. Conze noted that

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the applicants' actions have already caused problems to the neighbors and that the problems need to be fixed before they can ask for any more filling or regrading. Mr. Damanti noted that a more detailed engineering report would be necessary and should be submitted approximately two weeks prior to the continuation of the public hearing.

The following motion was made: that the Planning & Zoning Commission continue the public hearing regarding this matter on October 26, 2004 and that the applicant take immediate actions to correct the existing drainage problems being experienced by the neighbors and that the engineering report be submitted to the Planning & Zoning office by October 14, 2004 so that the Commission members and neighbors will have an opportunity to review it prior to the continuation of the hearing. A motion was made by Mr. Bigelow, seconded by Mr. Spain and unanimously approved.

GENERAL MEETING

Approval of Minutes

May 11, 2004 General Meeting

Several typos were noticed and were corrected. The following motion was made: that the Minutes be approved as corrected. The motion was made by Mr. Conze, seconded by Mr. Spain and unanimously approved.

May 25, 2004 Public Hearing

It was noted that a page was missing from the draft minutes. This page will be distributed to the Commission members in the near future and action will be postponed until then.

June 22, 2004 Public Hearing

The following motion was made: that the Minutes be adopted as presented. The motion was made by Mrs. Forman, and seconded by Mr. Spain. All voted in favor of the motion except Mr. Bigelow who had not attended the June 22nd meeting.

September 21, 2004 General Meeting

A clarification and correction was made on page 4. The following motion was made: that the Commission approve the corrected minutes. The motion was made by Mr. Conze, seconded by Mrs. Forman. All voted in favor except Mr. Bigelow and Mr. Kenny who had not attended the meeting on September 21.

Any Other Business (requires two-thirds vote of Commission)

Mr. Ginsberg said that there were two items of other business to be discussed. They included the property at 14 Contentment Island Road and the house on the Boston Post Road in the Bishop Gate subdivision. The following motion was made: that the Commission discuss the two items of other business. The motion was made by Mr. Spain, seconded by Mr. Bigelow and unanimously approved.

John Beinecke, 14 Contentment Island Road

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Mr. Ginsberg reviewed with the Commission the plans to replace an existing brick retaining wall at 14 Contentment Island Road, the Beinecke property. The wall is within 100 feet of mean high water but would not be within the Flood Hazard Zone. No other development activity is proposed except for the replacement of the existing wall. Commission members discussed the facts of the proposal and concluded that it would be appropriate not to take action on the matter until it could be placed on the agenda for a general meeting. They did not see the need for a public hearing but were not comfortable taking action until they had had an opportunity to review the plans and it was a regular agenda item.

House at 2239 Boston Post Road in the Bishop's Gate subdivision

Commission members noted that they had anticipated that this old house would be preserved as part of the subdivision and that the Resolution makes mention of that fact. The developers of the subdivision fixed up the old house and sold it to a different builder. That builder had obtained a Zoning Permit to relocate the old house and construct a substantial addition. The house was elevated and was in the process of being relocated but a large piece of equipment struck one of the support structures and the house collapsed. The Commission members said that it would not be appropriate for any new Zoning Permit to be issued for a replacement house until the owner appears before the Commission and requests an amendment of the subdivision approval. The staff will notify the property owner to that effect.

Discussion, Deliberation and Possible Decisions On the Closed Public Hearing Items

Proposed Amendment of the Darien Zoning Regulations

The Commission members were comfortable with amending the Regulations to modify the fee schedule. The following motion was made: that the Commission members adopt the modification and that the effective date of the amendment shall be 12:00 noon on Sunday, October 17, 2004. The motion was made by Mr. Spain, seconded by Mr. Kenny and unanimously approved.

Land Filling & Regrading Application #127, Shedd & Jane Glassmeyer, 2 McCrea Lane.

Staff was instructed to draft a Resolution to approve the project. Action will be taken at a future meeting.

Flood Damage Prevention Application #210, Land Filling & Regrading Application #123, Per & Jeanne Sekse, 29 Outlook Drive.

Commission members wanted more time to study the application materials before rendering a decision on this matter.

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Flood Damage Prevention Application #215, Land Filling & Regrading Application #130, Peter Horan & Beth Stanley-Brown, 7 Fresh Meadows Lane.

Staff was instructed to draft a Resolution to approve the project. Action will be taken at a future meeting.

There being no further business, the meeting was adjourned at 10:30 p.m.

Respectfully submitted,

David J. Keating
Assistant Director of Planning